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In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 572

JAMES LOUIS GIROUARD, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

MEMORANDUM FOR THE UNITED STATES

OPINIONS BELOW

The majority and dissenting opinions in the circuit court of appeals (R. 26–39) are reported at 149 F. 2d 760.

JURISDICTION

The judgment of the circuit court of appeals was entered June 1, 1945 (R. 40). On August 27, 1945, Mr. Justice Black extended to October 30 petitioner's time to file a petition for a writ of certiorari (R. 40), and the petition was filed on that date. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial

Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether an alien who has religious scruples against bearing arms but is willing to serve in a noncombatant capacity may be admitted to citizenship.

STATUTE INVOLVED

The pertinent provisions of the Nationality Act of 1940 and the amendments thereto are printed as an appendix to the petition for a writ of certiorari, pp. 20–22.

STATEMENT

Petitioner, a native of Canada, entered the United States in 1923 and has since resided in this country (R. 17). In 1940 he filed a declaration of intention to become a citizen of the United States (R. 2–3), and in 1943, a petition for naturalization (R. 9–13). In answer to the question, on the preliminary form of application, as to whether he was willing to take up arms in defense of the United States, petitioner answered: "No (Non-combatant) Seventh Day Adventist" (R. 7). On preliminary examination before a naturalization examiner, petitioner stated that this answer was based on purely religious grounds (R. 17, 19). In his Selective Service questionnaire he had claimed exemption from both combatant and noncombatant military service as a conscientious objector (R. 17, 21). At a hearing before the district judge, petitioner testified that

he was a member of the Seventh Day Adventist sect, many of whom, he said, were serving in the armed forces as noncombatants, and that he was willing to serve in the Army as such noncombatant, but would not bear arms (R. 18). The district judge ruled (R. 18):

> That since the Selective Service and Training Act permits, as a matter of right, an applicant for the draft to express a willingness to serve in the armed forces of the United States, but as a non-combatant, then this petitioner by exercising that right is still a person who can take an unqualified oath of allegiance to the United States, and is therefore eligible to citizenship.

He accordingly admitted petitioner to citizenship (R. 14). On appeal, the judgment was reversed (R. 40), one judge dissenting (R. 32–39).

ARGUMENT

We think the majority of the court below properly ruled that the decisions of this Court in *United States* v. *Schwimmer*, 279 U. S. 644; *United States* v. *Macintosh*, 283 U. S. 605; and *United States* v. *Bland*, 283 U. S. 636,[1] compelled a holding that petitioner was ineligible to be admitted to citizenship. The *Schwimmer* and *Macintosh* decisions may, as petitioner contends (Pet. 5–9), be distinguished from the present case on their facts, in that Mrs. Schwimmer expressed

[1] See also *In re Summers*, No. 205, October Term, 1944, decided June 11, 1945.

opposition to any form of military force and Macintosh reserved the right to make an individual determination of the moral justification of a particular war. It is, however, impossible so to distinguish the *Bland* decision. There the applicant for citizenship, who had actually spent nine months nursing soldiers in France during World War I, expressed her willingness to defend the country "as far as my conscience as a Christian will allow," and it was evident, as Chief Justice Hughes pointed out in his dissenting opinion, that her reservations related to her religious scruples against bearing arms. (See also the opinion of the Second Circuit holding that Miss Bland could properly take the oath, 42 F. 2d 842.) This Court ruled that she was nevertheless ineligible for citizenship because she would not unqualifiedly agree to bear arms in defense of the United States.

In 1940, approximately ten years after the *Bland* decision, Congress passed the Nationality Act of 1940, which made important changes in the law of naturalization in other respects, but did not change the requirement of the oath of allegiance and did not provide for the admission to citizenship of aliens having conscientious objections to bearing arms. In fact, the 1940 Act specified the form of the oath of allegiance (Sec. 335 (b), App. to Pet., p. 20), which, prior to that time, had been prescribed by administrative regulation. This action on the part of Congress

would seem to be a recognition and an acceptance of the majority opinions of this Court in the cases referred to.

In 1942, amendments to the Nationality Act granted special privileges to aliens who served in the armed forces of the United States in wartime by eliminating or changing the requirements as to declaration of intention, period of residence, fees, etc. (Secs. 323 (a) and 701, App. to Pet., pp. 21–22). Both these statutes specifically provide that the benefits conferred shall not be available to a "conscientious objector who performed no military duty whatever or refused to wear the uniform." Petitioner argues (Pet. 12–17) that the specific exclusion of conscientious objectors who performed no service implies that conscientious objectors who did perform military duty in uniform are eligible to the benefits of the statute, and that, since these amendments made no change in the oath of allegiance, they represent a congressional declaration that persons willing to perform noncombat service in uniform may properly take the oath, despite religious scruples against bearing arms. The implications of the 1942 amendments must be found from the words of the statutes themselves, for there is no discussion of the status of conscientious objectors under these amendments in the committee reports or congressional debates. (See 77th Cong., 2d sess., S. Reps. 989, 1664; H. Reps. 1765, 1896; 88 Cong. Rec. 1589, 1790–1791, 1794. See also H. Rep.

1710.) Two district courts have held that the clause excluding conscientious objectors who performed no military service did have the effect of permitting naturalization of aliens who actually served in a noncombatant capacity even though they would not unqualifiedly agree to bear arms in defense of the country. *In re Kinloch*, 53 F. Supp. 521 (W. D. Wash.); *In re Sawyer*, 59 F. Supp. 428 (D. Del.). The district court for the District of Columbia has recently held to the contrary. *In re Nielsen*, 60 F. Supp. 240. The majority of the court below seems to have accepted the interpretation in the *Kinloch* decision, but considered that the 1942 amendments granted the privilege of naturalization only to conscientious objectors who had actually served in a noncombatant capacity, as a reward for actual service (R. 31–32). Since it is unlikely that Congress intended to make a fundamental change in the general requirements for citizenship without comment and by indirection, we do not think the 1942 amendments can be deemed to have limited the effect of the *Bland* decision.

Respectfully submitted.

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